

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## FREDERICK H. SHULL, JR.,

Case No. 2:18-cv-01781-APG-PAL

Plaintiff,

V.

THE UNIVERSITY OF QUEENSLAND, et  
al.,

(Mot. Serve Cert. Mail – ECF No. 21;  
Mot. Serve Via Hague Conv. – ECF No. 22)

## Defendants.

## ORDER

13 This matter is before the court on Plaintiff Frederick H. Shull, Jr.'s Emergency Motion for  
14 Permission to Serve Via Certified Mail (ECF No. 21) and Motion for Service Via Court Clerk  
15 Pursuant to Hague Convention (ECF No. 22). These Motions are referred to the undersigned  
16 pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

## BACKGROUND

18 Mr. Schull is proceeding in this action *pro se*, which means he is not represented by an  
19 attorney. *See* LSR 2-1. This case arises from Shull's allegations that defendants discriminated  
20 against him, and all other similarly situated medical students, on the basis of national origin.  
21 Compl. (ECF No. 15). The 85-page, 21-count Complaint asserts that defendants' practices  
22 violated 42 U.S.C. §§ 1983, 1988, 2000(d), and numerous other federal and state laws.<sup>1</sup> Mr. Shull  
23 also alleges state law claims including breach of contract, negligence, breach of implied covenant  
24 of good faith and fair dealing, fraud, civil conspiracy, negligent supervision, and defamation.

25 The Complaint identifies the following defendants by name: (1) the University of

27 <sup>1</sup> On December 14, 2018, a Notice of Related Cases (ECF No. 31) was filed stating that a related action  
28 was removed to this court from the Eighth Judicial District Court of the State of Nevada. *Frederick H.*  
*Shull, Jr. v. The University of Queensland*, 2:18-cv-02377-KJD-NJK.

1       Queensland School of Medicine (“medical school”), which is located in Brisbane, Australia,  
2       (2) Ochsner Medical Group, (3) U.S. Department of Education, (4) Geoff McColl, executive dean  
3       of the medical school, (5) Leonardo Seoane, faculty member of the medical school and  
4       administrator employed by Ochsner, and (6) Gregory McGhee, program manager of the DOE’s  
5       Office of Civil Rights in Dallas, Texas. Compl. at 4–9.<sup>2</sup>

6       The Motion for Permission to Serve Via Certified Mail (ECF No. 21) states that Shull  
7       asked the medical school to waive formal service of process or provide information concerning  
8       any agent(s) authorized to accept service in the United States. Mr. Shull represents that the medical  
9       school refused his request for waiver unless it received an extension of time to file an answer. The  
10       medical school also refused to provide information for any authorized agent(s). Shull argues, but  
11       for the medical school’s unfair behavior, he would have already accomplished personal service  
12       within the United States. In addition, Shull asserts he sent a copy of the Complaint and summons  
13       via U.S. Postal Service certified mail to the medical school’s vice-chancellor and executive CEO,  
14       Peter Hoj, in Brisbane, Australia. He believes this comports with the Federal Rules of Civil  
15       Procedure<sup>3</sup> and the Supreme Court’s decision in *Water Splash, Inc. v. Menon*, --- U.S. ---, 137  
16       S. Ct. 1504, 1507 (2017). He claims it is unfair to incur the time and expense of providing  
17       international service of process to the medical school because it refused to give him contact  
18       information for agents located in the United States (more specifically, in Nevada, Indiana, or  
19       Louisiana) who are authorized to accept service.

20       The Motion for Service Via Court Clerk Pursuant to Hague Convention (ECF No. 22) asks  
21       the court to order service of the summons and complaint on defendants McColl and the medical  
22       school “via operations of the court clerk’s office” for two defendants, the medical school and  
23       McColl, who are located in Brisbane, Australia.<sup>4</sup> Shull states that under the Hague Service

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<sup>2</sup> The Complaint does not allege the citizenship or domicile of Messrs. McColl and Seoane. However, one  
25       of the motions before the court indicates that Mr. McColl is located in Brisbane, Australia.

26       <sup>3</sup> All references to a “Rule” or the “Rules” in this Order refer to the Federal Rules of Civil Procedure.

27       <sup>4</sup> Defendants McColl, Seoane, and the medical school have filed a Joinder (ECF No. 36) to Ochsner’s  
28       Motion to Dismiss (ECF No. 26). The Joinder states that McColl, Seoane, and the medical school have not  
      been properly served with process. However, to expedite dismissal, they are specially appearing to join  
      Ochsner’s motion and seek dismissal for lack of personal jurisdiction.

1 Convention he is not authorized to transmit service pro se. Thus, he asks the court to order service  
2 on his behalf.

3 **DISCUSSION**

4 **I. LEGAL STANDARDS**

5 Rule 4 governs “service of process,” which is the legal term describing a formal delivery  
6 of documents giving the defendant notice of a pending lawsuit. *R. Griggs Group Ltd. v. Filanto*  
7 *Spa*, 920 F. Supp. 1100, 1103 (D. Nev. 1996) (citing *Volkswagenwerk Aktiengesellschaft v.*  
8 *Schlunk*, 486 U.S. 694, 700 (1988)). Strict compliance with the rules governing manner of service  
9 is required. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999) (“An  
10 individual or entity named as a defendant is not obliged to engage in litigation unless notified of  
11 the action, and brought under a court’s authority, *by formal process.*”) (emphasis added). Federal  
12 courts lack personal jurisdiction over a defendant unless the defendant has been properly served  
13 in accordance with Rule 4. *Crowley v. Bannister*, 734 F.3d 967, 974–75 (9th Cir. 2013).

14 The term “process” includes, but is not limited to, summonses, subpoenas, and certain court  
15 orders such as civil contempt orders. Fed. R. Civ. P. 4, 4.1, 45. Service requirements depend on  
16 the type of defendant and the location of service. *E.g.*, Fed. R. Civ. P. 4(e) (individuals within a  
17 judicial district of the United States), 4(f) (individuals in a foreign country), 4(g) (minors or  
18 incompetent persons), 4(h) (corporations, partnerships, or associations), 4(i) (the United States and  
19 its agencies). Service of court documents other than process is less formal. After a defendant is  
20 formally served with process, the plaintiff may serve other all court “papers” via multiple delivery  
21 methods, including regular mail, personal delivery, and electronic means such as the court’s  
22 electronic filing system. Fed. R. Civ. P. 5(a), (b).<sup>5</sup>

23 Rule 4(f) governs how to effect service on defendants in a foreign country.<sup>6</sup> Individuals  
24 and business entities outside of a judicial district of the United States may be served:

25 <sup>5</sup> The Rules require a party to show proof of service for all other court documents with a “certificate of  
26 service.” Fed. R. Civ. P. 5(d). All documents filed with the court must include a certificate of service,  
which is a disclosure statement indicating how a party served a document on other parties. LR IC 4-1(d).

27 <sup>6</sup> Rule 4(h) states that a foreign corporation, partnership, or association “at a place not within a judicial  
district of the United States” must be served “in any manner prescribed by Rule 4(f) for serving an  
individual, except personal delivery under Rule 4(f)(2)(C)(i).” Fed. R. Civ. P. 4(h)(2).

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

11 Fed. R. Civ. P. 4(f).

12        In this case, two defendants are in Brisbane, Australia. The United States and Australia  
13 are both parties to the Hague Convention on the Service Abroad of Judicial and Extrajudicial  
14 Documents in Civil and Commercial Matters (“Hague Convention”), a multilateral treaty that is  
15 designed to “simplify, standardize, and generally improve the process of serving documents  
16 abroad.” *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1507 (2017). The Hague Convention  
17 “specifies certain approved methods of service and ‘pre-empts inconsistent methods of service’  
18 wherever it applies.” *Id.* (quoting *Schlunk*, 486 U.S. at 699). Because the United States and  
19 Australia are both member countries, “compliance with the Convention is mandatory.” *Schlunk*,  
20 486 U.S. at 705.

21 The Supreme Court has held that the Hague Convention does not prohibit service by mail.  
22 *Water Splash*, 137 S. Ct. at 1507. The Court cautioned, however, that acceptable forms of service  
23 vary by country. *Id.* Dozens of countries “have either objected, or declined to object, to service  
24 by mail under Article 10” of the treaty. *Id.* at 1512, n.7, 1513 (expressly clarifying that its holding  
25 “does not mean that the Convention affirmatively *authorizes* service by mail”). Courts “must look  
26 outside the Hague Convention for affirmative authorization of the international mail service,” and  
27 “any requirements as to how that service is to be accomplished.” *Brockmeyer v. May*, 383 F.3d  
28 798, 804 (9th Cir. 2004). In cases governed by the Hague Convention, service by mail is

1      permissible when two conditions are met: (1) “the receiving state has not objected to service by  
2      mail,” and (2) “service by mail is authorized under otherwise-applicable law.” *Water Splash*, 137  
3      S. Ct. at 1513 (citing *Brockmeyer*, 383 F.3d at 803–04). Australia “does not object to service by  
4      postal channels, *where it is permitted in the jurisdiction in which the process is to be served.*”  
5      Hague Conference on Private International Law, Status Table re: Hague Convention, Australia’s  
6      Declarations (emphasis added), <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1062&disp=resdn> (last visited Dec. 28, 2018).

8      Pursuant to the Hague Convention, Australia has designated its Attorney-General’s  
9      Department as its “Central Authority.” Hague Conference on Private Int’l Law, *Australia - Central*  
10     *Authority & practical information*, <https://www.hcch.net/en/states/authorities/details3/?aid=878>  
11     (last visited Dec. 28, 2018). According to the Australian Attorney-General’s Department,  
12     international service must comply with the Hague Convention, be performed through a diplomatic  
13     channel, or be carried out by a private-process server. *See* Australian Government, Attorney-  
14     General’s Department, *Serving a legal document across international borders*, <https://www.ag.gov.au/Internationalrelations/PrivateInternationalLaw/Pages/ServingaLegalDocumentAcrossInternationalBorders.aspx> (last visited Dec. 28, 2018); *see also* *Service of foreign civil legal*  
15     *document in Australia* (Nov. 2018), <https://www.ag.gov.au/Internationalrelations/PrivateInternationalLaw/Documents/CLU-PIL-prepare-request-for-service-in-australia-incoming.pdf> (last visited Dec. 28, 2018).

## 20      **II. ANALYSIS**

21      Mr. Shull seeks to effect service by mail on certain defendants located in Brisbane,  
22      Australia. Whether initiated by Shull or the Clerk of Court, service by mail is not appropriate here  
23      because Shull has not attempted to comply with the Hague Convention. Compliance with the  
24      Hague Convention is mandatory in this case as both the United States and Australia are member  
25      countries. *Schlunk*, 486 U.S. at 705; *see also* Fed. R. Civ. P. 4(f), Advisory Committee’s Notes,  
26      1993 Amendment (“Use of the Convention Procedures, when available, is mandatory if documents  
27      must be transmitted abroad to effect service.”). Because there is an “internationally agreed means  
28      of service that is reasonably calculated to give notice,” Rule 4(f)(1) applies and Shull is required

1 to effect service under the Hague Convention. The Hague Convention does not specify a  
2 deadline for a foreign country's Central Authority to facilitate service; however, the treaty provides  
3 that "alternative methods may be used if a Central Authority does not respond within six months."  
4 Fed. R. Civ. P. 4(f), Advisory Committee's Notes (noting that plaintiffs may resort to using the  
5 provisions of Rule 4(f)(3) in such cases). Mr. Shull's motions do not indicate whether he has  
6 submitted any service request to the Australian Attorney-General's Department. Shull's pro se  
7 status does not prevent him from requesting service by Australia's Attorney-General's  
8 Department. Alternative service methods, including those described in Rule 4(f)(2) and (3), are  
9 not available to Shull under the current circumstances.

10 In addition, the motions do not provide any information to establish that the relevant  
11 jurisdiction in Australia authorizes service by mail. Australia's Declarations to the Hague  
12 Convention indicate that procedures vary by jurisdiction. Shull argues that the Supreme Court's  
13 holding in *Water Splash* authorizes certified mail to Hague Convention member countries, such as  
14 Australia. However, *Water Splash* held only that the Hague Convention does not *prohibit* service  
15 by mail. It did not hold that the treaty *authorizes* service by mail. 137 S. Ct. at 1507. Shull has  
16 not provided a memorandum of points and authorities addressing whether service by mail is  
17 affirmatively authorized in the Australian jurisdiction where defendants are located. *See Shoham*  
18 *v. Islamic Republic of Iran*, 922 F. Supp. 2d 44, 50 (D.D.C. 2013); *see also* Fed. R. Civ. P. 4  
19 Advisory Committee's Note, 1993 Amendment (stating that under Rule 4(f)(2), "Service by  
20 methods that would violate foreign law is not generally authorized."). The court need not do  
21 Shull's legal research for him.

22 The court also notes that the medical school's failure to waive formal service of process is  
23 not grounds to trigger alternative means of service. A plaintiff may ask a foreign defendant for a  
24 waiver under Rule 4(d),<sup>7</sup> but the Rules do not impose "adverse consequences" on foreign  
25 defendants who decline because certain countries maintain policies that discourage residents from  
26 waiving formal service. Fed. R. Civ. P. 4(d), Advisory Committee's Notes, 1993 Amendment

27 <sup>7</sup> Certain types of defendants cannot waive formal service. *See* Fed. R. Civ. P. 4(d), Advisory Committee's  
28 Notes, 1993 Amendment (explaining that the United States, its agencies, corporations, and officers, as well as other governmental entities subject to service under Fed. R. Civ. P. 4(j) cannot waive formal service).

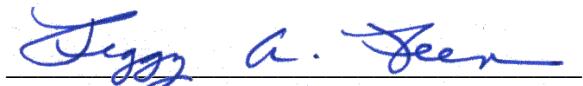
1 (stating that expense shifting provisions “apply only if the plaintiff and defendant are both located  
2 in the United States”).

3 In short, Shull must comply with the Hague Convention to serve the Australian defendants.

4 Accordingly,

5 **IT IS ORDERED:** Shull’s Emergency Motion for Permission to Serve Via Certified Mail  
6 (ECF No. 21) and Motion for Service Via Court Clerk Pursuant to Hague Convention (ECF  
7 No. 22) are **DENIED**.

8 Dated this 28th day of December, 2018.

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10 PEGGY A. LEEN  
11 UNITED STATES MAGISTRATE JUDGE

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